UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

JERRY'S CHEVROLET, CADILLAC, INC. **Hudson Oaks, Texas**

Employer

and **Case 16-RC-10571**

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Jerry's Chevrolet, Cadillac, Inc., is a Texas corporation engaged in the sale, service and repair of new and used cars, and the sale of parts in Hudson Oaks, Texas. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all of the Employer's automobile technicians at its Hudson Oaks, Texas location. The parties have no prior bargaining history. A hearing officer of the Board held a hearing and the parties filed briefs with me. The Unit sought by the Petitioner includes all full-time and regular automotive service technicians, apprentices, and lube rack technicians at the Employer's Hudson Oaks, Texas location. The Employer argues that the appropriate unit should include all service technicians, including all full-time and regular automotive service technicians, apprentices, and lube rack technicians employed by Jerry's Chevrolet, Cadillac, Inc.; Jerry's Buick, GMC, Pontiac; Jerry's Nissan; and Durant Toyota at facilities located in Hudson Oaks, Texas.

I. ISSUE

The sole issue is whether the petitioned-for unit consisting of all service technicians including all full-time and regular automotive service technicians, apprentices, and lube rack technicians employed by Jerry's Chevrolet, Cadillac, Inc. at the Hudson Oaks, Texas facility, should include the same classification of employees at the Jerry's Buick, GMC, Pontiac; Jerry's Nissan; and Durant Toyota facilities also located in Hudson Oaks, Texas.

I find that the petitioned-for unit is an appropriate unit. I also find the single-facility presumption has not been rebutted by the Employer. The factual basis and analysis for my findings follows.

II. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer operates Jerry's Chevrolet, Cadillac, Inc., a Chevrolet/Cadillac dealership in Hudson Oaks, Texas. The Employer also operates companion dealerships, each independently incorporated and known as Jerry's Buick, GMC, Pontiac; Jerry's Nissan; and Durant Toyota. The Chevrolet, Cadillac; Buick, Pontiac, GMC; and Nissan dealerships are contiguously located at the corner of Highway 80 and Interstate 20, and the Toyota dealership is located directly across from the Cadillac building, also on Highway 80. The Employer collectively refers to the facilities as Jerry's Family of Dealerships.

Jerry Durant owns Jerry's Chevrolet, Cadillac, Inc. and Durant Toyota. He is a part owner of Jerry's Buick, GMC, Pontiac and Jerry's Nissan. Durant oversees the operation of Jerry's Chevrolet, Cadillac, Inc. and the three other dealerships. He participates in the discipline and discharge of employees for each facility.

Donald Ray Allen is the President of Jerry's Buick, Pontiac, GMC and Nissan dealerships. He is the Vice President of Jerry's Chevrolet, Cadillac, Inc., and the Secretary and

Treasurer of Durant Toyota. Allen is also a ten percent owner of the Buick, Pontiac, GMC and Nissan dealerships. Allen oversees the daily operations of Jerry's Family of Dealerships. He participates in the discipline and discharge of employees for each facility.

Dan Patton, Human Resources Manager and Building Manager for the Employer, has an office on the premises of Jerry's Chevrolet, Cadillac, Inc. Patton participates in the hiring, firing and discipline of employees for each dealership. He participates in recruitment and coordinates safety training and sexual harassment training for the dealerships. He is responsible for drug testing and background checks for all new employees.

I find that Jerry Durant, Donald Ray Allen, and Dan Patton are supervisors within the meaning of Section 2(11) of the Act because they each possess the authority to hire, fire and discipline and to effectively recommend such action and, therefore, are excluded from the appropriate unit.

The Employer's hiring process is somewhat decentralized. Recruitment and hiring is initiated at the dealership level where initial contacts are made and first interviews are conducted. The centralized human resources department routinely conducts second interviews, drug tests, and background tests for applicants. The dealerships all use the same employment application, job descriptions, and performance evaluations. Likewise, each location distributes the same employee handbook with a different cover page for each dealership. All technicians are paid at similar flat rates and similar pay periods and work the same shift—from 8:00 a.m. to 5:00 p.m. They enjoy the same fringe benefits, including a 401(k) plan, vacation days, holidays, a retirement plan, insurance coverage, and bonus programs. The employees may take a lunch break at varying times, usually beginning around 11:00 a.m.

The centralized administrative functions are housed in the administrative offices in the Toyota building. The offices and administrative staff of Durant and Allen and the accounting and payroll functions are maintained within this grouping of offices.

Service managers and sales managers operate the individual facilities with a large degree of autonomy, reporting directly to either Durant or Allen. Charlie Pace is the service manager for Jerry's Chevrolet, Cadillac, Inc. Pace directly supervises the service technicians. He also disciplines and executes the discharge of service technicians. New hires and discharges must be approved by Patton, Allen, or Durant. Service managers conduct initial interviews of candidates for employment before they are interviewed and tested by the human resources manager. If a service manager with no vacant position discovers a qualified candidate, (s)he will customarily refer the candidate to a service manager at one of the other dealerships. The service managers do not have the authority to directly supervise the technicians at the other dealerships. I find that Pace is a supervisor within the meaning of Section 2(11) of the Act because he possesses the authority to discipline and to effectively recommend such action and, therefore, is excluded from the appropriate unit.

The Chevrolet, Cadillac dealership also employs a shop foreman who reports directly to the service manager. This position is currently vacant, filled temporarily by an employee "on loan" from the Buick, GMC, Pontiac dealership. The other dealerships do not employ a shop foreman.

Each facility also has an office manager who works in the centralized administrative office to accomplish work within each dealership. Elaine Perry is the office manager for Jerry's Chevrolet, Cadillac, Inc. The office managers process payroll for their respective dealership. The record revealed that employees who have payroll disputes or questions must first seek

assistance directly from the office manager of the dealership with whom they are employed. The office managers also handle benefits enrollment and process new employee paperwork.

Each dealership has a separate parts department counter. The parts department for the four dealerships is managed by Parts Manager Jaime McLain. He coordinates this activity with a parts counter person at each of the dealerships. The Chevrolet, Cadillac dealership also employs Roy Hellman as an assistant parts manager. The other three dealerships do not employ assistant parts managers. A single parts-runner completes daily local runs for parts, which supply all the dealerships.

The record revealed that all new cars are delivered to the Jerry's Nissan dealership, and later allocated among the four dealerships. The record revealed that customer pay (CP) service and repair (non-warranty) may be performed on vehicles irrespective of vehicle make/model. For instance, the Chevrolet, Cadillac dealership may perform CP (non-warranty) work on GMC vehicles and vice versa. However, cross-warranty work may only be provided to customers upon approval by the manufacturer.

Jerry's Chevrolet, Cadillac, Inc. employs approximately 14-16 service technicians, one apprentice and two lube rack technicians. Jerry's Buick, Pontiac, GMC employs approximately eight to 10 service technicians and one apprentice. Jerry's Nissan employs approximately two service technicians, one apprentice and one lube rack technician. Durant Toyota employs approximately six to seven service technicians. The record is silent regarding the number of apprentices and lube rack technicians who work for Durant Toyota.

Employees do not routinely transfer among the four dealerships. The record revealed a few instances where service writers, managers and technicians transferred from one dealership to another. In one instance in 2000, a technician, Charlie Malone, transferred from the Chevrolet, Cadillac dealership to the Toyota dealership and back again. In another more recent example, a

GMC service technician was assigned to Nissan during one day to cover a staff shortage. Permanent transfers are charged to the facility where the employee is physically located, and employees do not lose status or benefits upon transfer. The record reflects that the Employer does not routinely transfer employees among facilities to cover for employee absences, and that it was more likely in the event of temporary staff shortages that, instead, vehicles would be transferred to the dealerships with sufficient resources. Employee movement from dealership to dealership is more typically a permanent move, which happens infrequently—once or twice per year according to the Employer's testimony. However, the Employer offered no evidence to support this conclusion. Testimony by one technician revealed that in the course of two years, he had not witnessed the temporary transfer of employees from one dealership to the other to cover temporary staff shortages, but instead that it was commonplace for a customer's vehicle to sit in a bay for a number of days until the technician responsible returned to work.

The record revealed that employees from different facilities do not engage in daily work-related interaction by telephone, e-mail, or face-to-face, but the Employer encourages contact among dealerships when necessary to accomplish the task at hand. Testimony by one technician revealed that work-related consultations with colleagues typically occur within the dealership. The technician first consults with the shop foreman and service manager or an engineer who works for the manufacturer before he requests assistance from a technician at another dealership.

The record revealed that employees from all the dealerships participate collectively in human resources training such as sexual harassment training and safety training, but do not participate jointly in technical training or training leading to certification. Service technicians typically own their own set of tools. Some of the tools—diagnostic tools and scanners for instance—are manufacturer-specific. The dealerships share a car wash facility, a state inspection facility, and collision center. The color of the uniforms differs from dealership to dealership.

The process for servicing and repair is virtually the same at all of the dealerships. The process begins when the service writer collects the customer information and details of the specific problem. The service writer also determines the preliminary need and records this along with the information gathered onto a ticket that is signed by the customer. The car is then transported to a lot at the dealership and the ticket is delivered to the dispatcher who assigns the work to a specific technician who possesses the skills and abilities required to repair or service the vehicle. After the repairs are completed, the charges are noted on the ticket which is then transferred to the cashier to close the transaction.

III. ANALYSIS

The Petitioner seeks a single-facility unit consisting of automotive service technicians, apprentices, and lube rack technicians at Jerry's Chevrolet, Cadillac, Inc. located in Hudson Oaks, Texas. In contrast, the Employer contends that the only appropriate unit is a multi-facility unit consisting of the automotive service technicians, apprentices, and lube rack technicians at the Jerry's Chevrolet, Cadillac, Inc., Jerry's Buick, GMC, Pontiac; Jerry's Nissan; and Durant Toyota facilities located in Hudson Oaks, Texas.

The Act does not require that the bargaining unit be the only unit or the most appropriate unit, but only that the unit be "appropriate." ***Morand Bros. Beverage Co.***, 91 NLRB 409, 418 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951). In evaluating the appropriateness of a petitioned-for bargaining unit, the Board relies on the community of interest standard. ***Overnight Transportation***, 322 NLRB 723, 724 (1996), *citing* ***NLRB v. Action Automotive***, 469 U.S. 490, 494 (1985). Several factors are considered in the determination of whether employees share a community of interest, including but not limited to, the nature of employee skills and functions, common supervision, work situs, interchangeability and contact among employees, wages and benefits, and work conditions. *See e.g.* ***Harron Communications, Inc.***, 308 NLRB

62 (1992). The Board has found that automotive mechanics and service technicians may share a sufficient community of interest to support a determination that they are an appropriate unit under the Act. *See e.g.* ***Dodge City of Wauwatosa, Inc***., 282 NLRB 459 (1986); ***Fletcher Jones Chevrolet***, 300 NLRB 875 (1990). Here, the parties agree that service technicians, apprentices, and lube rack technicians should be included in the bargaining unit. I find that these classifications share a sufficient community of interest.

Although the parties agree on the classifications to be included, they disagree as to whether the unit should be limited to one location or should include four locations. The Board has long held a single location unit is presumptively appropriate for collective bargaining. ***D&L Transportation***, 324 NLRB 160 (1997); ***J&L Plate***, 310 NLRB 429 (1993); ***Bowie Hall Trucking***, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit may be overcome "by a showing of functional integration so substantial as to negate the identity of the single facility." ***Bowie Hall Trucking***, supra at 41. The burden of rebutting such presumption rests on the party requesting a multi-facility unit. In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations; similarity of employee skills, functions, and working conditions; degree of employee interchange; geographic separation; and bargaining history if any exists. ***New Britain Transportation Co.***, 330 NLRB 397 (1999); ***Esco Corp.,*** 298 NLRB 837, 839 (1990). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. ***J&L Plate***, supra. I find the Employer has failed to present sufficient evidence to rebut the presumptive appropriateness of the Jerry's Chevrolet, Cadillac, Inc. dealership as a single-facility unit.

A. <u>Centralized Control</u>

Although the record reflects the Employer's operations are somewhat functionally integrated, its operations are not so integrated as to overcome the single facility presumption. In particular, although the Employer's operation is centralized in many of its personnel and labor relations policies concerning hiring, benefits, discipline and training, the Board has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. ***Neodata Product/Distribution***, 312 NLRB 987, 989 fn. 6 (1993). The record revealed that the Employer implements integrated marketing strategies via a website and newspaper advertising. Similarly, license plate holders, decals, and business cards reflect an integrated operation. However, the integrated marketing strategy does not alone establish that the Employer's operations are in fact integrated. In contrast, the record revealed the use of dealership-specific insignia on invoices, uniforms, and the employee handbook.

In further support of a finding that the Employer's operations are not so integrated as to defeat the single facility presumption, the Employer's testimony revealed that the Employer employs service managers at each dealership who operate with some autonomy. The technicians at each dealership report directly to a service manager who, in turn, reports to Allen and/or Durant. The service managers do not have the authority to supervise employees at the companion dealerships. In dealing with employees from other dealerships, supervisors must first address members of management within the chain of command. The service managers exercise discretion in hiring and disciplining employees. The service manager participates in monthly management meetings and business forecasting along with other service managers and other members of management including Allen and Durant. Each service manager manages the dealership's expenses; significant expenditures require further approval. Although personnel and labor relations administrative functions are centralized, the centralized function relies on the

individual dealerships to process information and execute policy. The Employer's evidence that each dealership functions under the direct authority of individual service managers who routinely supervise employees and make managerial decisions that impact the dealership failed to demonstrate lack of autonomy at the dealership level. The Employer, therefore, failed to meet its "burden to rebut the presumption by introducing affirmative evidence establishing a lack of autonomy at the individual plant level." ***J&L Plate, Inc.***, supra at 429.

The Employer's reliance on ***Tungsten Contact Mfg. Co.***, 189 NLRB 22 (1971) and ***Dayton Transport Corp.***, 270 NLRB 1114 (1984) to support an argument that the Employer's operations are so functionally integrated that a multi-facility unit is an appropriate unit is misplaced. In ***Tungsten***, the plant manager at one of the facilities had no supervisory authority with regard to twenty-five percent of the employee complement at that facility. Further, the operation was "highly integrated" and the Employer's plans were to eventually merge the two facilities. In ***Dayton Transport***, tractors from the facilities were interchangeable and drivers were interchanged 400-425 times in a twelve-month period and were subject to supervision by the terminal manager who dispatched them. In the case at hand, all the employees at each dealership are supervised by a single service manager, and they are not subject to the supervision of service managers from other dealerships. Finally, the record in our case revealed only marginal employee interchange, whether permanent or temporary.

The Employer cites ***NLRB v. Davis Cafeteria***, 396 F.2d 18 (5th Cir. 1968) for the proposition that a multi-facility unit is required where matters typically subject to collective bargaining are centrally controlled and administered at two or more facilities. ***Davis*** is not controlling here as it is factually inapposite, and the court's holding was not based on a single-facility presumption analysis. In ***University Club of Rochester, 269 NLRB 819 (1984)***, unlike in our case, the bartender employees rotated between two facilities on a weekly basis, and the

employees were supervised by a single general manager. In our case, the employees are not regularly interchanged, and individual service managers for each dealership maintain supervisory authority over all the service employees in the dealership they manage.

B. <u>Similarity of Skills, Functions and Working Conditions</u>

The record revealed that service technicians at the four dealerships perform the same basic services and repairs. The Employer argues that Chevrolet technicians and Pontiac, Buick, GMC technicians are essentially interchangeable. Likewise, the Employer argues that the Toyota and Nissan technicians are interchangeable. However, the record revealed that these employees are not, in fact, routinely interchanged among dealerships. Further, the record revealed differences in the skills and tools required of technicians at each dealership specific to the make of the vehicles sold by that dealership. For instance, warranty work may only be completed by a dealership designated to complete such work, unless otherwise authorized by the manufacturer. The technical training completed by technicians is also manufacturer-specific, and most technicians personally own a set of tools used in their work that may include manufacturer-specific tools (e.g., diagnostic scanners). I find that although service technicians generally function in the same manner, the required skills, training and tools varies from dealership to dealership, and, therefore, I conclude that that Employer has failed to rebut the presumption of the appropriateness of a single-facility unit on this basis.

The Employer cites ***Waste Management Northwest***, 331 NLRB No. 51 (2000), ***Cheney Bigelow Wire Works***, 197 NLRB 1279 (1972), and ***Palby Lingerie, Inc.***, 252 NLRB 176 (1980) to support the contention that the similar skills, duties and working conditions in the case at hand militate a finding that a multi-facility unit is appropriate. Each case bears distinguishable facts rendering them unpersuasive. In ***Waste Management***, the evidence demonstrated a lack of autonomy at the individual facilities. Drivers from different facilities consistently communicated

with each other by radio and drivers routinely exchanged routes. In ***Cheney Bigelow***, the Board heavily relied on evidence that the two facilities were covered by a two-plant collective bargaining agreement between the Employer and the intervenor, and collective bargaining existed historically on a two-plant basis. ***Palby Lingerie*** is a case in which the General Counsel sought a two-plant unit, and the Employer sought two single-facility units.

C. <u>Employee Interchange</u>

Among the factors considered in determining whether the single facility presumption has been rebutted, the Board views the absence of employee interchange as a critical factor. ***First Security Services Corp.***, 329 NLRB 235 (1999). The Employer's evidence of employee interchange among the four dealerships was marginal and thus does not establish that the facilities have been so effectively merged into a comprehensive unit, or so functionally integrated that the Jerry's Chevrolet, Cadillac dealership has lost its separate identity and the single location presumption has been rebutted. ***J&L Plate***, supra. Although the Employer presented some instances where employees temporarily and permanently transferred between dealerships, the Employer failed to establish how often temporary transfers occurred, which facilities were involved, and how many employees were transferred. *See, e.g.* **R*&D Trucking, Inc.*** 327 NLRB 531 (1999) (a history of substantial and regular interchange of drivers between two locations amounts to sufficient evidence of employee interchange). The Employer's evidence in this regard is primarily conclusionary. Further, the Employer's evidence established at best that permanent transfers occur at a rate of only one to two per year, and the Employer failed to offer evidence to support even this conclusion. The primary interaction among employees occurs at social events such as Six Flags day and Christmas parties, and on the shuttle that operates to transport employees to and from the employee parking lot. *See e.g.,* ***Lawson Mardon U.S.A., Inc.***, 333 NLRB No. 122 (2000). Otherwise, the evidence failed to demonstrate

that employees from different facilities engaged in work-related interaction on a daily or routine basis. I find insufficient employee interchange to rebut the single-facility presumption.

To support a finding that degree of interchange and interaction among the employees in our case requires a finding that a multi-facility unit is appropriate, the Employer cites ***Norrock Shoe, Inc.*** 209 NLRB 843 (1974) and ***Caron International, Inc.***, 222 NLRB 508 (1976). ***Norrock*** is distinguishable because the issue considered by the Board was whether the Regional Director properly determined that a four-facility unit was more appropriate than a five-facility unit. The distance between the facilities appeared to be determinative in the Regional Director's decision—four of the facilities were located within six and one-half miles of each other and the fifth was located thirty-three miles from the others. The Board found, "The employees at the four plants sought do not have a community of interest sufficiently distinct and separate from that enjoyed by employees of the fifth plant so as to warrant the establishment of the four-plant unit found by the Regional Director." ***Norrock Shoe, Inc.***, 209 NLRB 843 (1974). Here, we are not considering which of two multi-facility units is appropriate. In ***Caron***, one facility was essentially an extension of the other, the employees were in daily contact with each other, the employees performed maintenance and repair on the equipment of both facilities, employees at one facility trained the employees of the other, and deliveries and pick-ups routinely occurred between facilities. In our case, each dealer sells and repairs a completely different product line; one dealership is not an extension of the other. Further, the nature of the operation does not necessitate employee contact among dealerships and, in fact, employee contact does not occur at the rate evidenced in ***Caron***.

D. <u>Geographic Separation</u>

The Employer's evidence established that the dealerships are extremely close in proximity. Three of the dealerships share the same property and are not separated by fence or

other barriers. In fact, employees and customers may move among three of the dealerships without ever leaving the property. The dealerships also share common driveways and signage. One of the four dealerships—Durant Toyota—is directly across the highway from the other three. The adjacency of the dealerships is certainly a factor to be considered. However, it is significant that the employees of each dealership function in completely separate facilities under separate supervision, and rarely, if at all, interact in the performance of their duties. I, therefore, find that although the adjacency of facilities is a factor weighing in favor of a multi-facility unit, it is not controlling in the instant case.

The Employer argues that in the single-facility versus multi-facility analysis, little emphasis is placed on geographic proximity when the distance between facilities is negligible, although it may still be considered and supports a finding that the employees of the four dealerships share a community of interest. While this is certainly true, this factor is not determinative. The Employer cites NLRB case number 10-RC-13235, which is not controlling, and ***Palby Lingerie, Inc.***, 252 NLRB 176 (1980), in which the General Counsel sought a two-plant unit, and the Employer sought two single-facility units.

E. Bargaining History

No bargaining history exists concerning the employees, and no labor organization is seeking to represent the four dealerships in a single unit.

F. Conclusion

In sum, I find that the employer has failed to establish significant employee interchange and centralized control over daily operations and labor relations sufficient to defeat the single facility presumption. The evidence reflects that permanent transfers happen at a rate of one to two per year. The Employer failed to present evidence regarding the frequency of temporary

transfers or to show any consistent and meaningful contact among the employees of the four dealerships. Interaction among employees occurs primarily at social functions and on a shuttle bus operated by the Employer. The minimal employee interchange and meaningful employee interaction diminishes the significance of the centralized functions and close geographic proximity. *See* ***J&L Plate***, 310 NLRB 429, 430 (1993). Further, the daily supervision and control of employees is not so limited and the interchange of employees is not so substantial as to rebut the single-facility presumption. *See* ***Penn Color, Inc***., 249 NLRB 1117, 1119 (1980). Although operations and labor relations are centralized to a certain degree, service managers for each dealership function individually in the assignment of work and direction and discipline of the employees of the dealership. They also recruit and interview applicants and recommend action with regard to employment and terminations. The Employer has failed to establish that the day-to-day interests of the employees at the location sought by the Petitioner have merged with those of the employees at the other locations at issue. ***Id***. Based on the foregoing, I find the evidence in the instant case supports the conclusion that the petitioned-for single-facility unit is an appropriate unit.

IV. OTHER CLASSIFICATIONS & EVIDENTIARY RULINGS

The parties stipulated and I find that service porters and lot boys should be excluded from an appropriate unit.

Pre-delivery inspection (PDI) technicians inspect newly-delivered vehicles and prepare them to be stored or placed on the lot for sale. These technicians are employees of Jerry's Nissan. As I find that the appropriate unit does not include the employees of Jerry's Nissan, I similarly find that the PDI technicians should not be included in the appropriate unit found herein.

The record is undeveloped regarding the duties and responsibilities of shop foreman and service writer. Neither party included the specific classifications of shop foreman or service writer in the petition or requested their inclusion on the record at the hearing. Evidence was not presented by either party demonstrating that these classifications share a community of interest such that they should be included in the petitioned-for unit. Jerry's Chevrolet, Cadillac, Inc. employs one shop foreman and one service writer. The other dealerships do not employ shop foreman at all. It is not clear whether these classifications are included in the more broad classification of "service technicians." I find that employees in the classifications of shop foreman and service writer are entitled to vote by challenged ballot.

The Employer argued in its brief that Petitioner's Exhibit 2 is unauthenticated, rendering it inadmissible hearsay. I need not rule on this issue as Petitioner's Exhibit 2 was not considered in order to reach my decision in this case.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated and I find that the Employer, a Texas corporation, is engaged in the sale, service, and repair of new and used cars, and the sale of parts in Hudson Oaks, Texas. During the past twelve months, the Employer had a gross volume of sales valued in excess of $500,000, and during that same period of time, the Employer sold goods valued in excess of $50,000 to customers located within the state of Texas. Each of said customers during the same period of time purchased and received goods valued in excess of $50,000 directly from

suppliers and customers located outside the state of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. The parties stipulated to the petitioner's status as a labor organization.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6*)* and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular time automotive service technicians, apprentices, and lube rack technicians at the Employer's Hudson Oaks location.
EXCLUDED: All office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Association of Machinists and Aerospace Workers, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. ***North Macon Health Care Facility***, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Fort Worth Regional Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102 on or before May 12, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on May 19, 2004. The request may **not** be filed by facsimile.

Dated May 5, 2004, at Fort Worth, Texas.

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director,
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